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No. 93-1299

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

SUNDANCE CRUISES CORP. and SCI CRUISES, INC., formerly known as SUNDANCE CRUISES, INC.,

Petitioners,

—against—

THE AMERICAN BUREAU OF SHIPPING,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Should this Court review a case where: (1) Petitioners chose to register their cruise ship in the Bahamas, thereby becoming subject to the provisions of the Bahamian Merchant Shipping Act, (2) Respondent was chosen by Petitioners to act as a classification society for surveying the vessel and issuing required statutory certificates on behalf of the Bahamian Government pursuant to the Act, (3) the ship subsequently grounded and sank outside of U.S. waters, (4) the Circuit Court held the immunity provisions of the Act protected Respondent from suit when acting as a classification society on behalf of the Bahamian government, and (5) Petitioners assert as a basis of granting their petition that these immunity provisions contravene the stated policy of the International Convention for the Safety of Life at Sea, which is incorporated explicitly into Bahamian law, and the public policy of the United States?

2. Should this Court issue a Writ of Certiorari to the Second Circuit Court of Appeals, in the absence of a conflict among the circuits, where the Circuit Court found there was no agreed upon choice of law and applied the law of the flag to a Bahamian vessel, consistent with the principles of *Lauritzen v. Larsen*?

3. Should this Court review the decision below because the Circuit Court noted that the disparity between Respondent's fee of $85,000 and Petitioners' claim of over $260,000,000 was strong evidence that the parties did not intend to make Respondent liable for the loss of the ship?

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—against—

THE AMERICAN BUREAU OF SHIPPING,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Respondent, The American Bureau of Shipping ("ABS") was retained by Petitioners early in 1984 for the dual purposes of classifying their vessel and issuing the required statutory certificates as one of the authorized representatives of the Government of the Bahamas, where the owner chose to register her under the name SUNDANCER.

In the spring of 1984, the vessel was converted from a passenger-car ferry to a cruise vessel, for service between Vancouver and Alaska in the summer months and between

California and Mexico in winter. ABS issued the necessary certificates in the name of the Commonwealth of the Bahamas on June 14, 1984, and the vessel commenced her first weekly cruise out of Vancouver on June 16, 1984.

A few minutes before midnight on June 29, 1984, the SUNDANCER was cruising north on her third weekly trip up the inside passage off the west coast of British Columbia. Because the ship was in dangerous restricted waters, the Canadian pilot, the Captain and the Officer of the watch were all on the bridge at the time. The pilot gave improper instructions to the helmsman, which the bridge officers failed to countermand in time to avert the ship grounding at high speed, ripping open substantial holes below the waterline on her starboard side.

SUNDANCER, though badly damaged, proceeded under her own power to a nearby dock, where passengers and crew disembarked with no loss of life, while the ship took on more water and eventually settled to the shallow bottom. The ship was then salvaged and towed to a dry dock in Vancouver for inspection and repair.

The Canadian Government immediately undertook an extensive investigation of the casualty. Among its findings, the Report of the Canadian investigation noted that the sinking was caused by (1) the underwater damage in or near the dry stores compartment, (2) the fact that the watertight door between the dry stores compartment and the refrigerated stores compartment, which was open at the time of the casualty, failed to close, and (3) the total extent of the flooding, which exceeded the regulatory standard for which the vessel was designed and approved.

About two and one half years after the casualty, Petitioners sued respondent for negligence and breach of contract claiming very general deficiencies in ABS' survey of the vessel.

Nothing was said in the original complaint about holes in the watertight bulkhead between the refrigerator stores compartment and the forward sewage treatment room or the lack of non-return valves on pipes leading into the same sewage treatment system. The first of those allegations were made over a year and a half into the case, based on previously unreported observations of a pipefitter and pipefitter's apprentice who worked on the vessel during her conversion. The second claim was made shortly before the scheduled trial, based on testimony of Petitioners' own superintendent engineer. The alleged faulty work on the piping system was evidently done in 1977 without objection from the classification society then assigned to the vessel, many years before ABS was retained.

The holes and the absence of non-return valves became the essence of Petitioners' claims against ABS. As the Second Circuit noted, neither of these conditions was brought to the attention of ABS prior to the casualty although they were created by owners' contractors or employees. Johnson Lines was one of the shareholders of the corporate owner of SUNDANCER (a Petitioner herein) and the operator of the ship prior to and including the time the piping was changed and continuously thereafter through the time of the casualty. Any knowledge Petitioners may have had as to deficient piping installed under its supervision or open holes in a bulkhead left by owner's contractors during the conversion was not brought to the attention of ABS.

Although this case reached the Second Circuit on an appeal from a grant of summary judgment dismissing the complaint, it should be noted that there was a hearing before the District Court on the interpretation of relevant portions of the Bahamian Merchant Shipping Act and, in addition, trial testimony was taken from the Master of the SUNDANCER, Captain Berquist, concerning the events leading up to and immediately following the casualty. Finally, videotaped testimony, deemed to be a trial equivalent, was taken from Lars Sjogren, a principal of Petitioners, who reviewed and approved

payment of the ABS invoices, on the question of the applicability of the choice of law clause contained on the back of the invoices. Thus issues central to this appeal were fully addressed in live trial testimony.

ARGUMENT

Petitioners chose to register SUNDANCER in the Bahamas and thereby become subject to its law, including its laws implementing the International Convention for the Safety of Life at Sea, 32 U.S.T. 47 T.I.A.S. No. 9700 ("SOLAS"). It does no violence to any policy supporting safety at sea to apply the law of the jurisdiction chosen by Petitioners in this case. The shipowner's non-delegable duty to provide a seaworthy vessel remains in effect. This has long been the law. Any "policy" which dilutes that duty, or any contractual choice of law inconsonant with this duty, would indeed have an unfortunate impact on the preservation of safety of life at sea. The courts of the United States, including this Court, have consistently held that even its own governmental inspectors are immune from liability for their safety inspection activities, noting, *inter alia*, that as regulatory "watchdogs," they can only act to promote safety, not to ensure it. Thus, Petitioners' argument that application of the Bahamian Immunity provision violates U.S. policy is simply incorrect. The petition has no merit.

POINT I

APPLICATION OF THE BAHAMIAN IMMUNITY PROVISION WAS FULLY CONSONANT WITH SOLAS AND U.S. PUBLIC POLICY

Petitioners' claim that ABS violated SOLAS is, in fact, a claim that ABS violated Bahamian law, since SOLAS has effect only by virtue of its incorporation into the law of the

flag state. SOLAS, Article I.[1] Having chosen the Bahamian flag for its vessel, Petitioners were accordingly required to maintain the Vessel in compliance with Bahamian law. ABS, as a surveyor for the Bahamian Government, was charged with checking the vessel for compliance with the requirements of Bahamian law, specifically the Bahamian Merchant Shipping Act which incorporates and is the enabling legislation for the SOLAS and Load Line Conventions. The Act sets out a comprehensive scheme of enforcement, including criminal penalties for shipowners and masters whose vessels are not in compliance and the right of inspectors to detain such ships. *See, e.g.* The Merchant Shipping Act of the Bahamas, 1976 (Consolidated Edition, Published 1990), §§ 169-215, 194, 195, 196 and 208. (certain pertinent portions quoted in Appendix, pp. 1a-9a)

Regulation 17 of SOLAS requires that:

> Certificates issued under the authority of a Contracting Government shall be accepted by the other Contracting Governments for all purposes covered by the present Convention. They shall be regarded by the other Contracting Governments as having the same force as certificates issued by them (Appendix, p. 11a).

While, pursuant to Regulation 19 of SOLAS, ships flagged in other jurisdictions are subject to a control verification procedure "directed towards verifying that there is on board a valid certificate . . . [s]uch certificate *shall* be accepted unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substan-

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[1] "(a) The Contracting Governments undertake to give effect to the provisions of the Convention. . . .

(b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended." (Appendix, p. 10a)

tially with the particulars of that certificate." SOLAS, Regulation 19. (Appendix, p. 11a) In other words, SOLAS is implemented by the laws of each signatory which are to be fully respected by all other signatories.

SOLAS recognizes the critical role of the shipowner in maintaining a vessel in seaworthy condition. After a SOLAS survey the owner is barred by Regulation 11 from further changes in the areas surveyed without approval of the Administration, in this case the government of the Bahamas. (Appendix, p. 10a) The Bahamian statute also recognizes that only the shipowner can ensure compliance with SOLAS and thus requires that the owner advise the Director of Maritime Affairs "of any alteration, change or reconstruction of the ship which could affect her classification, measurement, tonnage or load line, within thirty days . . . setting forth the details thereof." The Merchant Shipping Act of the Bahamas § 9. (Appendix, p. 1a)

No provision or policy reflected in SOLAS is in conflict with the immunity provision of the Bahamian Act which simply allows the inspector to exercise its good faith discretionary judgment without fear of reprisals from shipowners.

Application by a United States court of a law other than Bahamian would infringe upon the traditional right of nations to "determine for [themselves] the conditions on which [they] will grant [their] nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it." *Lauritzen v. Larsen*, 345 U.S. 571, 584 (1953). Application of any law other than Bahamian, even if applied pursuant to an otherwise enforceable choice of law clause, would similarly infringe upon United States maritime policy to "defer to a nonnational or international maritime law of impressive maturity and universality" by application of the law of the flag of the vessel. *Id.* at 581.

Petitioners inexplicably contend that the decisions below holding that the inspector, who acted on behalf of the Bahamas

in Sweden, on the high seas, in England, in the United States, in Panama, in Mexico, and in Canada was immune from liability for its good faith safety surveys, somehow offend a critical public policy of the United States. They suggest this with the full knowledge that the United States itself routinely grants the same immunity to its own governmental inspectors. In fact, case after case reiterates the importance of impressing the duty to ensure safety on the manufacturers and operators and owners of all manner of transport, not on the independent regulatory inspectors who can only perform a confirmatory check of compliance. This Court, in upholding the immunity from liability of a Federal Aviation Agency inspector for claimed negligence in connection with his safety inspection of aircraft noted that the regulator's duty is "to promote safety, . . . not to insure it." *United States v. S.A. Empresa De Viacau Aerea Rio Grandense (Varig Airlines)*, 467 U.S. 797, 821 (1984). In other cases, courts have found the discretionary function exception to the waiver of sovereign immunity of the Suits in Admiralty Act, 46 U.S.C. § 742, directly applicable to SOLAS inspections (by U.S. Coast Guard inspectors) of exactly the same variety as those at issue here. Thus, in *Kearny Barge Co. v. Andre Le Doux, Inc.*, 709 F. Supp. 720, 722 (E.D. La. 1989), the Coast Guard inspector was found immune from suit for negligent certification of a vessel because "the process of making such an inspection is an exercise of discretionary regulatory authority of the most basic kind." *Accord, In re OCEAN RANGER Sinking off Newfoundland on Feb. 15, 1982*, 632 F.Supp. 72 (E.D. La. 1985). In addition to the courts below, the only other court that has considered the issue of the immunity of Bahamian statutory inspectors has also applied Bahamian law. *Argandona et al. v. Lloyd's Register of Shipping et al.*, Case No. 92-7959 (CA 06), *Slip Op.*, (Circuit Court of the 11th Judicial Circuit, Dade County, Florida) (June 4, 1993).

Moreover, as held by the courts below, United States public policy does not support the proposition that those with a

primary and nondelegable duty with respect to safety can justifiably rely on regulatory safety inspections intended for the benefit of the public, nor can such inspections be viewed as causative of any condition of unseaworthiness. *Patentas v. U.S.*, 687 F.2d 707, 717 (3rd Cir. 1982) (plaintiff's knowledge of Coast Guard inspections did not give plaintiff's justification to forego other remedies or precautions); *Great American Ins. Co. v. Bureau Veritas*, 338 F. Supp. 999, 1015 (S.D.N.Y. 1972), *aff'd*, 478 F.2d 235 (2d Cir. 1973) ("the burden of insuring the seaworthiness of a vessel must ultimately rest upon the shipowner"). In the decision below, the court emphasized that the shipowner, not ABS, was "ultimately responsible for and in control of the activities aboard ship." 7 F.3d at 1084.

Petitioners' argument that an international convention or fundamental U.S. policy is violated by the application of Bahamian law to immunize good faith surveys conducted on behalf of the Bahamian Government has no basis in law or fact.

The courts below properly upheld the time-honored and unbroken view that the shipowner's nondelegable duty to ensure the seaworthiness of its vessels is the best way to ensure their safety and that to allow the shipowner to shift this responsibility to the statutory/class inspector would undermine that duty.

POINT II

THE LOWER COURTS' APPLICATION OF FEDERAL MARITIME LAW, AND ULTIMATELY, BAHAMIAN LAW, TO THIS CASE DOES NOT PRESENT A QUESTION APPROPRIATE FOR THIS COURT'S REVIEW

The Second Circuit's application of Bahamian Law to this case does not raise a question requiring the intervention of

this Court. As explained in Point I, the Circuit Court adhered to the maritime policy settled since *Lauritzen v. Larsen.*

Petitioners specifically claim that the Second Circuit decided to apply federal maritime choice of law rules instead of honoring the parties' alleged choice of law embodied in a New York choice of law clause. That decision, Petitioners contend, conflicts with both a prior Second Circuit decision, *State Trading Corp. of India v. Assuranceforeningen Skuld*, 921 F.2d 409 (2d Cir. 1990) and a Fifth Circuit decision, *Stoot v. Fluor Drilling Servs., Inc.*, 851 F.2d 1514 (5th Cir. 1988), which Petitioners interpret as establishing the principle that choice of law clauses should be given priority in maritime cases. No such conflict exists.

After trial testimony and supplemental submissions on the issue of the enforceability of the New York choice of law clause at issue, the District Court denied Petitioners' claim that the boiler plate clause on the back of ABS invoices, sent routinely without negotiation to Petitioners, modified the written agreement between the parties. Upon review of the District Court's decision, the Second Circuit stated: "[Petitioners] did not mutually agree in writing to vary the terms and conditions of the original agreement, which was silent as to the applicable law. The [district] court held that, accordingly, general principles of admiralty law govern the contract. We agree." 7 F.3d 1077, 1080. The Circuit Court also stated "we think that the question does not ultimately turn on the parties' intent, because federal maritime law governs this case, whether by direct application of admiralty rules or by way of New York law, which also requires application of federal maritime law to maritime cases." 7 F.3d at 1077. Accordingly, the Court followed the analysis required by *Lauritzen*, which gives a preferred position to the law of the flag of the vessel involved. Here, that is the law of the Bahamas.

Even if the circuit court's decision in this case overruled its prior decision in *State Trading*, this would not constitute a

ground for granting the petition. Rules of the United States Supreme Court, Rule 10. Moreover, such an assumption is purely hypothetical because no decision on the issue of whether choice of law clauses should be honored in maritime cases was made by the Second Circuit in either this case or *State Trading*. In fact, in *State Trading*, the Second Circuit expressly did not decide if a choice of law clause incorporated into an agreement between the parties to the contract action should take precedence over choice of law rules and, in any event, clearly did not hold that a choice of law clause which ultimately mandated application of federal maritime law would preclude *Lauritzen's* choice of law considerations.

In *State Trading*, a cargo owner appealed from an order granting summary judgment dismissing its claim against an insolvent shipowner's insurer under Connecticut's direct-action statute. The Second Circuit upheld summary judgment agreeing with the lower court that, under federal maritime choice of law analysis, Connecticut did not have a sufficient nexus to the case and its law was therefore inapplicable. Although Petitioners cite *State Trading* for the proposition "as a matter of law a contractual choice of law clause takes precedence over choice of law rules," Petitioners' brief, p. 7, the Second Circuit held that it "need not decide if the choice of law clause incorporated into the agreement between [the insurer] and [shipowner] additionally requires that [the plaintiff's] suit be dismissed," 921 F.2d at 417. Had the choice of law clause been effective, either Norwegian or Panamanian law would have been applied. The court's note that choice of law clauses "*generally* take precedence over choice of law rules", *Id.*, certainly can not be said to conflict with a later case in which the court held the specific choice of law clause did not take precedence because it was not a part of the controlling agreement between the parties.[2]

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[2] In fact, in *State Trading* the court engaged in a full choice of law analysis following the guidelines of *Lauritzen* and mentioned the choice of law clause only in passing.

Since the Second Circuit has never decided whether it will apply a valid choice of law clause in a maritime case, there is no merit to Petitioners' argument that the Second Circuit is in conflict with the Fifth Circuit's decision on this issue in *Stoot*. In any event, in *Stoot*, the Fifth Circuit merely held that where a choice of law clause calls for the application of the law of a "state that has a strong public policy favoring the application of its law and a substantial relationship to either the parties or the transaction, then that state's law will govern absent a countervailing federal interest." 851 F.2d 1518. In *Stoot*, the Fifth Circuit applied Louisiana's Anti-Indemnity Statute, and noted that "[s]everal cases have recognized the strength of Louisiana's interest in applying [this] statute." *Id.* Moreover, the court stressed that federal maritime law has no conflicting interest on the subject of indemnity clauses. *Id.* Petitioners have not and cannot point to any strong New York interest in applying its laws to this action.[3]

Moreover, Petitioners cite no precedent for the application of federal maritime law severed from maritime choice of law rules. They contend that, somehow, the New York choice of law clause mandates this result. (Petitioners' Brief, p. 8). In suggesting that such a result could possibly obtain, Petitioners forget that maritime law itself is an international, not a national law. As Justice Holmes noted, in *The WESTERN MAID*, 257 U.S. 419, 432 (1922), "[w]hen a case is said to be governed by foreign law or by general maritime law that is only a short way of saying that for this purpose the sovereign power takes up a rule suggested from without and makes it part of its own rules." In this maritime case involving Bahamian requirements for its flag vessels, application of any law other than "the rule suggested from without"—Bahamian law—would conflict with "perhaps the most venerable and

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[3] Petitioners evidently accept the Second Circuit's finding that under New York law, federal maritime law must be applied. Petitioners' brief, p. 8.

universal rule of maritime law,"—application of the law of the flag. *Lauritzen*, 345 U.S. at 581.

POINT III

THE COURT OF APPEAL'S OBSERVATION THAT THE DISPARITY BETWEEN THE FEE CHARGED BY ABS AND THE DAMAGES CLAIMED BY PETITIONERS IS EVIDENCE THAT THE PARTIES NEVER INTENDED FOR RESPONDENT TO BE LIABLE FOR THE LOSS OF THE VESSEL IS NOT A QUESTION OF SUFFICIENT WEIGHT TO WARRANT THE ATTENTION OF THIS COURT

Petitioners based their claims against ABS not only on improvident issuance of a SOLAS certificate as an agent of the Bahamas but also on approving the vessel as being "in class", that is, in compliance with the rules of ABS. Since the District Court found no damage was caused by classing the vessel, that claim was dismissed. The Circuit Court agreed, emphasizing that this finding "reflects our view that a shipowner is not entitled to rely on a classification certificate as a guarantee to the owner that the vessel is soundly constructed." 7 F.3d at 1084.

It should be noted that the Bahamas requires a vessel to be in class as a condition for issuing the SOLAS certificate. The factual basis of the class claims were no different from the SOLAS claims. Once again reliance was placed on the unreported holes in the bulkhead on top of the refrigerator and the absence of the non-return valves allegedly required in the piping system. The Canadian government investigation included specifically an examination of the bulkhead in question and the piping system said by Petitioners to be defective. The Canadian inspectors found no holes in the bulkhead and they took no exceptions to the piping system as it existed immediately after the casualty.

Petitioners object strongly to the observations of the Circuit Court that the disparity between the charges made by ABS for its surveys, $85,000, and the damages claimed, over $260,000,000, is an indication that there was no understanding between the parties that, under the circumstances presented, ABS should be liable for the loss of the ship.[4]

Although the disparity between the fees charged and the losses claimed were found to be an indication of the parties' intent by the Circuit Court, as previously noted, its holding was primarily based on the contrast in roles between a shipowner and a classification society. The shipowner has continuous control over his vessel and is aware of any changes in her condition. Insurance is used by the owner to protect its economic investment in the vessel and its operation. Under these circumstances, the law properly assigns to the shipowner a nondelegable duty to provide a seaworthy vessel.

By contrast, a classification society has no control over the vessel. Its representatives attend the vessel briefly and sporadically. It can of course decline to issue certificates where the vessel is found to be in violation of the applicable standards. The society must rely in large measure on the good faith cooperation of the owner who is obliged to notify the class society of significant changes in the condition of the ship and its equipment. The society is not an insurer and by the same token neither is it a detective. The system works well where there is cooperation between the shipowner and the classification society and where their respective roles are understood. The attempt, as here, to shift the responsibilities from the shipowner to the classification society finds no support in law and runs counter to a cornerstone of admiralty

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[4] Prior decisions also have held fees and exculpatory clause provisions (also present in the ABS contract) to be evidence that the inspection company was not intended to cover the risk of such liability. *See, e.g., Vitol Trading S.A., Inc. v. SGS Control Serv.*, 874 F.2d 76, 81-82 (2d Cir. 1989); *In re Oil Spill by the AMOCO CADIZ*, 1986 A.M.C. 1945, 1952 (N.D. Ill. 1986).

jurisprudence that it is always the owner who has the burden of providing a seaworthy vessel. This burden cannot be delegated or diluted by an attempt to transfer it to others.

The use of a classification society in surveying and certifying a vessel makes good sense if there is no attempt to distort what the society can do. The charges made are proportionate to the expertise applied, the time spent and the reasonable risks assumed. This does not include liability for the loss of the SUNDANCER whether or not the immunity provisions of the Bahamian Merchant Shipping Act are applied.

CONCLUSION

The petition for a Writ of Certiorari should be denied.

Dated: New York, New York
March 14, 1994

Respectfully submitted,

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APPENDIX

APPENDIX

The Merchant Shipping Act of the Bahamas 1976

Part II
Registration Etc. of Ships.

9. The Owner or master of a Bahamian ship shall advise the Director of any alteration, change or reconstruction of the ship which could affect her classification, measurement, tonnage or load line, within thirty days from the completion . . . setting forth the details thereof.

66.—(1) The Minister may appoint, in any port or place within or without The Bahamas, duly qualified persons to be surveyors to survey and measure ships under and for the purposes of this Act.

(2) The Minister may, by regulations, nominate any corporation or society within or without The Bahamas to be a Classification Society for the purposes of this Act, and any Classification Society may authorize any person to survey and measure ships under and for the purpose of this Act.

Part V
Safety

Application of Safety and Load Line Conventions.

172. The Minister may make such regulations as may appear to him to be necessary to give effect to the Safety Convention and the Load Line Convention.

Inspection for Safety.

174.—(1) Every Bahamian passenger ship shall be subjected to the surveys specified below, namely—

(a) a survey before the ship is put into service;

(b) periodic surveys at intervals of not more than one year;

(c) additional surveys as occasion arises.

(2) The surveys referred to in subsection (1) of this section shall be carried out as follows—

(a) the survey before the ship is put into service shall include a complete inspection of the hull, machinery and equipment, and this survey shall be such as to ensure that the arrangements, material and scantlings of the hull, boilers and other pressure vessels, main and auxiliary machinery, electrical installations, radio installation, radio installations in motor life-boats, portable radio apparatus for survival craft, life-saving appliances, fire detecting and extinguishing appliances, pilot ladders and other equipment fully comply with the requirements of the Safety Convention and with any regulations made under section 172 and 176, and the survey shall be such as to ensure that the workmanship of all parts of the hull and machinery and equipment is satisfactory, and that the ship is provided with such light and sound signals and distress signals as are required by the Safety Convention and the collision regulations;

(b) the periodic surveys shall be such as to ensure that the hull, boilers and other presssure vessels, main and auxiliary machinery, electrical installations, radio installations, radio installations in motor life-boats, portable radio apparatus for survival craft, life-saving appliances, fire detecting and extinguishing appliances, pilot ladders and other equipment are in a satisfactory condition and fit for the service for which they are intended and that they comply with the requirements of the Safety Convention and the regulations made under sections 172 and 176, and the light and sound signals and the distress signals carried by the ship shall also be subject to the survey;

(c) a survey, either general or partial, according to the circumstances, shall be made every time an accident

occurs or a defect is discovered which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, or whenever important repairs or renewals are made; and the survey shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewal are in all respects satisfactory and that the ship complies in all respects with the Safety Convention and the collision regulations and any regulations made under this Act.

(3) The hull, machinery and equipment (other than items in respect of which cargo ship safety equipment certificates, cargo ship safety radiotelegraphy certificates or cargo ship radiotelephony certificates are issued) of a Bahamian cargo ship shall be surveyed on completion and thereafter at intervals of not more than four years; and the survey shall be such as to ensure that the arrangements, material and scantlings of the hull, boilers and other pressure vessels, main and auxiliary machinery, electrical installations and other equipment are in all respects satisfactory for the service for which the ship is intended.

(4) The life-saving appliances and fire-fighting appliances of Bahamian cargo ships shall be subject to survey before the ship is put into a service and thereafter at intervals of not more than two years; and the fire control plans in new ships and the pilot ladders, light and sound signals and distress signals in new and existing ships shall be included in the surveys for the purpose of ensuring that they comply fully with the requirements of the Safety Convention and, where applicable, the collision regulations.

(5) The radio installations of Bahamian cargo ships and radiotelegraph installations in a motor life-boat or portable radio apparatus for survival craft which is carried in compliance with any regulations made under sections 172 and 176 shall be subject to survey before the ship is put into service and thereafter at intervals of not more than one year.

(6) Pleasure yachts shall be exempt from the inspections required by this section.

Safety Regulations

176. The Minister may make regulations respecting—

(a) the construction of hulls, including their subdivision into water-tight compartments and the fitting of double-bottoms and fire-resisting doors;

(b) the construction of machinery, with particular reference to the testing of the main and auxiliary boilers, connections, steam pipes, high pressure vessels and fuel tanks for internal combustion engines;

(c) the construction of equipment and the class and quantity of various types of equipment to be carried in any vessel, including the marking of boats, lifeboats, buoyant apparatus;

(d) compasses, sounding apparatus and other navigating appliances;

(e) propelling power and the appliances and fittings for steering;

(f) stability, and the data relating thereto to be supplied to the master of a motor ship;

(g) the marking of subdivision load lines on passenger motor ships;

(h) the provisions to be made for mustering the passengers and crew for abandoning ship, including the lighting of decks, passage ways and similar parts of the ship, and the provision of proper means of escape from the various parts of the ship;

(i) passenger accommodation and the number of passengers allowed to be carried;

(j) the production of plans and documentary evidence showing the construction of hulls, machinery and equipment, the subdivision of hulls into water-tight compartments, the arrangement of passenger accommodation and like information necessary to decide on the fitness of a motor ship for any particular service;

(k) the inspection of the hulls, equipment and machinery of motor ships and the extent to which inspection shall be carried out, having due regard to the class of voyage on which a motor ship is to be engaged and the trade on which she is employed, and whether the ship is classed with a society or association for the classification and registry of shipping approved by the Minister;

(l) the manning of motor ships, the number of certificated lifeboat men to be carried and the qualifications for and the granting of certificates to lifeboat men;

(m) the carrying of line-throwing apparatus;

(n) precautions against fire and damage control plans;

(o) the holding of periodic boat and fire drills;

(p) the provision of pilot ladders on ships;

(q) the lights to be carried and exhibited;

(r) the fog and distress signals to be carried and used;

(s) the steering and sailing rules to be observed;

(t) the radio apparatus and the number of radio operators to be carried in various classes of ships, and the hours of duty of such radio operators;

(u) the carrying of such charts, directions or information as the Minister considers necessary or expedient for the safe operation of ships, either at all times or on specified voyages.

Load Lines and Loading

194.—(1) Subject to any exemption conferred by or under this Act, no Bahamian load line ship shall proceed or attempt to proceed to sea unless—

(a) the ship has been surveyed in accordance with the load line regulations—

(i) in the case of an international load line ship, by a surveyor; or

(ii) in the case of a local load line ship, by an inspector;

(b) the ship complies with the conditions of assignment contained in the load line regulations;

(c) the ship is marked on each side with a mark (hereafter in this Act referred to as a "deck line") indicating the position of the uppermost complete deck as defined by the load line regulations, and with marks (hereafter in this Act referred to as "load lines") indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line regulations;

(d) the deck line and the load lines are of the description required by the load line regulations, the deck line is in the position requried by those regulations, and the load lines are of the number required by such of those regulations as are applicable to the ship; and

(e) the load lines are in the position required by such of the load line regulations as are applicable to the ship.

(2) Where any ship proceeds or attempts to proceed to sea in contravention of this section, the master and owner or charterer, and the agent if he is privy to the contravention, of the ship shall be guilty of an offence.

195.—(1) A Bahamian load line ship shall not be so loaded as to submerge the appropriate load line on each side of the ship in sea water when the ship has no list.

(2) Where a ship is loaded in contravention of subsection (1) of this section, the owner or master or charterer, or the agent if he is privy to the contravention, of the ship shall be guilty of an offence, and in addition to any penalty which may otherwise be imposed upon him on conviction he shall be liable to a fine of eight hundred dollars for every inch or fraction of an inch by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had been floating in sea water and had no list.

(3) An inspector may suspend the certificates of registry of a ship loaded in contravention of this section until she ceases to be so loaded.

196. If—

(a) the owner or master of a Bahamian load line ship which has been marked in accordance with the foregoing provisions of this Part fails without reasonable cause to keep the ship so marked; or

(b) any person conceals, removes, alters, defaces, obliterates, or permits any person under his control to conceal, remove, alter, deface or obliterate, any mark placed on a Bahamian ship in accordance with the foregoing provisions of this Part, except where he does so under the authority of a person empowered under the load line regulations to authorize him in that behalf.

he shall be guilty of an offence.

Unseaworthy Ships

208.—(1) Any person who sends or attempts to send, or is party to sending or attempting to send, a Bahamian ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanor, unless he proves either that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going to sea in such an unseaworthy state was, under the circumstances, reasonable and justifiable.

(2) The master of a Bahamian ship who knowingly takes the ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered shall be guilty of a misdemeanor unless he proves that her going to sea in such an unseaworthy state was, in the circumstances, reasonable and justifiable.

209.—(1) In every contract of service, express or implied, between the owner of a ship and the master of any seaman thereof, and in every instrument or apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing of the ship for sea, or the sending of the ship to sea, shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the voyage.

(2) Nothing in this section shall subject the owner of a ship to any liability by reason of the ship being

sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such state was reasonable and justifiable.

Part VIII

Legal Proceeding

Protection of Officers

279. Every officer appointed under this Act, and every person appointed or authorized under this Act for any purpose of this Act, shall have immunity from suit in respect of anything done by him in good faith or admitted to be done in good faith in the exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed on him under this Act.

International Convention for the Safety of Life at Sea, 1974

ARTICLE I

General Obligations under the Convention

(a) The Contracting Governments undertake to give effect to the provisions of the present Convention and the Annex thereto, which shall constitute an integral part of the present Convention. Every reference to the present Convention constitutes at the same time a reference to the Annex.

(b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended.

(i) Chapter I, Part B, Regulation 6

Inspection and Survey

The inspection and survey of ships, so far as regards the enforcement of the provisions of the present Regulations and the granting of exemptions therefrom, shall be carried out by officers of the country in which the ship is registered, provided that the Government of each country may entrust the inspection and survey either to surveyors nominated for the purpose or to organizations recognized by it. In every case the Government concerned fully guarantees the completeness and efficiency of the inspection and survey.

(ii) Chapter I, Part B, Regulation 11

Maintenance of Conditions after Survey

After any survey of the ship under Regulations 7, 8, 9 or 10 of this Chapter has been completed, no change shall be made in the structural arrangements, machinery, equipment, etc.

covered by the survey, without the sanction of the Administration.

(iii) Chapter 1, Part B, Regulation 17

Acceptance of Certificates

Certificates issued under the authority of a Contracting Government shall be accepted by the other Contracting Governments for all purposes covered by the present Convention. They shall be regarded by the other Contracting Governments as having the same force as certificates issued by them.

(iv) Chapter 1, Part B, Regulation 19

Control

Every ship holding a certificate issued under Regulation 12 or Regulation 13 of this chapter is subject in the ports of the other Contracting Governments to control by officers duly authorized by such Governments in so far as this control is directed towards verifying that there is on board a valid certificate. Such certificate shall be accepted unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of that certificate. In that case, the officer carrying out the control shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew. In the event of this control giving rise to intervention of any kind, the officer carrying out the control shall inform the Consul of the country in which the ship is registered in writing forthwith of all the circumstances in which intervention was deemed to be necessary, and the facts shall be reported to the Organization.

(v) Chapter II-1, Part B, Regulation 13(n)

Openings in Watertight Bulkheads

All watertight doors shall be kept closed during navigation except when necessarily opened for the working of the ship, and shall always be ready to be immediately closed.

International Convention on Load Lines, 1966

Article 13, Survey, Inspection and Marking

The survey, inspection and marking of ships, as regards the enforcement of the provisions of the present Convention and the granting of exemptions therefrom, shall be carried out by officers of the Administration. The Administration may, however, entrust the survey, inspection and marking either to surveyors nominated for the purpose or to organizations recognized by it. In every case the Administration concerned fully guarantees the completeness and efficiency of the survey, inspection and marking.

Article 15, Maintenance of Conditions after Survey

After any survey of the ship under Article 14 has been completed, no change shall be made in the structure, equipment, arrangements, material or scantlings covered by the survey, without the sanction of the Administration.